

IT 95-52  
Tax Type: INCOME TAX  
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )   Docket No.  
OF THE STATE OF ILLINOIS      )   SSN  
      v.                        )  
XXXXXX                        )   John E. White,  
      Taxpayer                  )   Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before the Department of Revenue's ("Department's") Office of the Administrative Hearings as the result of a timely protest of a Notice of Deficiency ("NOD") by XXXXX on behalf of XXXXX ("Taxpayers").<sup>1</sup> The basis of the NOD was the Department's determination that Taxpayer failed to report to the Department a final federal change in adjusted gross income for the taxable year ending 12/31/87.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Deficiency, which indicates that final changes were made to Taxpayer's federal adjusted gross income which correspondingly increased his Illinois income tax liability.

2. Taxpayer filed a timely Protest, in which he requested that the Department delay administrative proceedings until the challenge to the federal adjustment was complete. See Taxpayers' Protest.

3. Taxpayers did not request a hearing. Id.

4. On October 28, 1993, the Department ascertained that Taxpayer had made payments toward Taxpayer's federal adjustment. See 10/28/93 Schedule of Accounts.

5. Taxpayer's payments toward the federal adjustment acts as an admission that the adjustment was final.

6. Taxpayer did not report the final federal change to the Department pursuant to 35 ILCS 506(a), (b).

7. Taxpayer provided no evidence tending to show that reasonable cause existed for his failure to file amended returns, or for his failure to make payments based on the final federal change.

CONCLUSIONS OF LAW: Pursuant to 904(a) of the IITA, a Notice of Deficiency is prima facie evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904(a). Any person required to file an Illinois income tax return is required to notify the Department, within the time frame set by statute, of any final federal change which affects the computation of such person's base income. 35 ILCS 506(a), (b). In this matter, Taxpayer failed to present any evidence to rebut the prima facie case of the Department. Instead, the documentary evidence obtained by the Department indicated that Taxpayer made payments toward the federal change in adjusted gross income for the applicable period. I conclude that Taxpayer's payments act as an admission that the federal change had been finalized. Accordingly, Taxpayer is subject to additional tax.

In addition, the NOD proposed the assessment of a penalty for Taxpayer's failure to pay the entire tax liability by the due date. 35 ILCS 5/1005. Penalties imposed under that provision, however, shall not apply if the failure to pay the tax when due was due to reasonable cause. 35 ILCS 735/3-8. The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis. See *Rorabaugh v. United States*, 611 F.2d 211 (7th Cir. 1979); *Dumont Ventilation Co. v. Dept. of Revenue*, 99 Ill. App. 3d 263 (3d Dist. 1987). Here, Taxpayer failed to tender any evidence showing reasonable cause for his failure to report the change or pay the tax. I, therefore,

recommend that the Director finalize the Notice of Deficiency as issued.

Administrative Law Judge

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1. Although this matter is captioned under the names of the joint filers of the Illinois 1040 income tax return, I shall refer to the Taxpayers throughout this decision using the third person singular.